

Senate Bill 334

By: Senator Shafer of the 48th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to provide for legislative intent; to provide definitions; to create the State
3 Licensing Board of Home Inspectors; to provide for its membership, appointment, filling of
4 vacancies, terms of office, qualifications, powers and duties, staffing, and meetings; to
5 provide for licensing of home inspectors; to provide for qualifications and reciprocity under
6 certain circumstances; to provide for renewals and continuing education; to prohibit certain
7 acts; to provide for applicability; to provide for home inspection reports and their contents;
8 to provide for insurance requirements; to provide for related matters; to repeal Article 6 of
9 Chapter 3 of Title 8 of the Official Code of Georgia Annotated, relating to documentation
10 by home inspectors; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
14 is amended by adding a new Chapter 39B to read as follows:

15 **"CHAPTER 39B**

16 **43-39B-1.**

17 It is the intent of the General Assembly in the interest of public health, safety, and welfare
18 to require the regulation of home inspectors and to assure that consumers of home
19 inspection services can rely on the competence of home inspectors. The practice of home
20 inspection is declared a business or profession affecting the public interest, and this chapter
21 shall be liberally construed so as to accomplish the intent and purposes stated in this
22 chapter.

1 43-39B-2.

2 As used in this chapter, the term:

3 (1) 'Board' means the State Licensing Board of Home Inspectors.

4 (2) 'Business organization' means any partnership, corporation, limited liability entity,
5 business trust, joint venture, or other legal entity, other than an individual person, doing
6 business or seeking, offering, or contracting to do business as a home inspector or
7 otherwise performing or acting as a home inspector as defined in this Code section.

8 (3) 'Client' means any person who engages or seeks to engage the services of a home
9 inspector for the purpose of obtaining inspection of, and a written report upon, the
10 condition of a residential building.

11 (4) 'Commission' means the Georgia Real Estate Commission created in Code Section
12 43-40-2.

13 (5) 'Commissioner' means the real estate commissioner.

14 (6) 'Component' means a readily accessible and observable aspect of a system, such as
15 a floor or wall, but not individual pieces such as boards or nails where many similar
16 pieces make up a system.

17 (7) 'Home inspection' means a visual analysis for the purpose of providing a professional
18 opinion of the condition of a building, its carports and garages, and any reasonably
19 accessible installed components and the operation of the building systems, including, but
20 not limited to, the controls normally operated by the owner, for the following components
21 of a residential building of four units or fewer: heating system, electrical system, cooling
22 system, plumbing system, structural components, foundation, roof covering, exterior and
23 interior components, and site aspects as they affect the building. A home inspection shall
24 not be required to include the condition of systems or components which are not readily
25 accessible.

26 (8) 'Home inspection report' means a written report prepared for compensation by a
27 home inspector issued to a client after a home inspection.

28 (9) 'Home inspector' means a person who is licensed pursuant to this chapter as a home
29 inspector and who engages in the business of performing home inspections and writing
30 home inspection reports.

31 (10) 'Readily accessible' means available for visual inspection without requiring the
32 moving of personal property, dismantling, destructive measures, or any action that likely
33 will involve risk to persons or property.

34 (11) 'Residential building' means a structure consisting of from one to four family
35 dwelling units.

36 (12) 'Significantly deficient' means a system or component that is unsafe or not
37 functioning.

1 (13) 'System' means a combination of interactive or interdependent components
2 assembled to carry out one or more functions.

3 (14) 'Technically exhaustive' means an investigation that involves dismantling or the
4 extensive use of advanced techniques, measurements, instruments, testing, calculations,
5 or other means.

6 43-39B-3.

7 (a) There is created the State Licensing Board of Home Inspectors which shall consist of
8 five members. All members shall be residents of the State of Georgia. One member shall
9 be a public member. The public member of the board shall not be connected in any way
10 with the practice of home inspection. Four members shall be home inspectors. The home
11 inspector members who are initially appointed to the board shall have been actively
12 engaged in the practice of home inspection for at least five years immediately preceding
13 their appointment, shall have performed a minimum of 500 home inspections for
14 compensation, and shall demonstrate that they have passed an examination administered
15 by a national examination organization that complies with the standards established by the
16 National Commission of Certifying Agencies. After July 1, 2009, all home inspectors
17 appointed to be members of the board shall be required to be licensed pursuant to this
18 chapter.

19 (b) The Governor shall appoint the members of the board, subject to confirmation by the
20 Senate, with consideration given to appropriate geographic representation. Any such
21 appointments made when the Senate is not in session shall be effective until acted upon by
22 the Senate.

23 (c) A member of the board shall recuse himself or herself from voting on matters in which
24 the member has a conflict of interest. Whenever an investigation authorized by this chapter
25 results in the board initiating a contested case under Chapter 13 of Title 50, the 'Georgia
26 Administrative Procedure Act,' against a member, such member shall be recused from
27 voting on such matter and shall not discuss the matter with other board members or be
28 present when the board discusses or votes on such matter.

29 (d) The term of each member of the board shall be five years, except that the initial four
30 home inspector members shall be appointed to serve terms expiring July 1, 2009; July 1,
31 2010; July 1, 2011; and July 1, 2012, respectively. In the event of a vacancy, the Governor
32 shall appoint a person to fill such vacancy, and the person so appointed shall serve for the
33 remainder of the unexpired term.

34 (e) The commission shall supply staff support for the board. The commissioner shall serve
35 as executive officer of the board. The commissioner shall be charged with the duties and
36 powers as delegated by the board.

1 43-39B-4.

2 (a) The board shall meet at least quarterly each year for the purpose of transacting such
3 business as may properly come before it and of overseeing its operations.

4 (b) In addition to and consistent with the powers granted in Chapter 1 of this title, the
5 board shall have the power to:

6 (1) Request from the various departments, agencies, and authorities of this state and its
7 political subdivisions and their agencies and authorities such available information as it
8 may require in its work; and all such departments, agencies, and authorities shall furnish
9 such requested available information to the board and its divisions within a reasonable
10 time;

11 (2) Provide by regulation for reciprocity with other states or territories of the United
12 States in the licensing of home inspectors, provided that such other states have
13 requirements substantially equal to the requirements in force in this state for registration,
14 licensure, or certification, and that any such home inspector holding a current and valid
15 license, certificate, or registration from another state or territory seeking licensure by way
16 of reciprocity shall demonstrate that such applicant meets, in the discretion of the board,
17 the qualifications, requirements, and criteria set forth in this chapter;

18 (3) Establish and adjust fees as necessary in accordance with Chapter 1 of this title;

19 (4) Adopt official seals for its use and change them at pleasure;

20 (5) Establish any policies and procedures for regulating the businesses of home
21 inspection beyond those contained in the code of ethics and standards of practice for
22 home inspectors which are required by subsection (c) of this Code section; and

23 (6) Promulgate and adopt rules and regulations necessary to carry out this chapter.

24 (c) The board shall promulgate standards of practice and a code of ethics for the practice
25 of home inspectors. Such standards and code shall be substantially similar to and not less
26 stringent than those of the American Society of Home Inspectors or its successor
27 organization.

28 43-39B-5.

29 (a) Anyone seeking to be licensed as a home inspector in this state shall file an application
30 on a form provided by the board accompanied by an application fee as provided by the
31 board.

32 (b) A person shall be eligible for licensure as a home inspector if he or she:

33 (1) Is at least 18 years of age;

34 (2) Is of good moral character;

35 (3) Has successfully completed high school or its equivalent;

36 (4) Has:

(A) Completed a board-approved course of study of no less than 80 hours that covers all of the following components of a residential building of four units or less: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof covering, exterior and interior components, and site aspects as they affect the building; or

(B)(i) Presented documentation as required by the board that he or she has been engaged in the practice of home inspection for compensation for not fewer than three years prior to the effective date of this chapter; and

(ii) Performed not fewer than 100 home inspections, as defined in this chapter, for compensation; and

(5) Prior to or within one year of the effective date of this chapter, has passed a valid, reliable examination designed to test competence in home inspection practice and developed pursuant to accepted psychometric standards promulgated by the American Educational Research Association or similar organization acceptable to the board.

(c) Any otherwise qualified applicant failing the examination required by this chapter may be reexamined at any regularly scheduled examination within one year of the date of original application upon payment of a reexamination fee in an amount to be set by the board, without need to resubmit an application, unless any information set forth in the previously submitted application is no longer accurate or complete. Anyone requesting to take the examination a third or subsequent time shall wait at least one calendar year after the taking of the last examination and shall submit an application with the appropriate examination fees.

43-39B-6.

Notwithstanding any other provision of this chapter to the contrary, any person who holds a current and valid home inspector license, certification, or registration issued by another state or territory of the United States, where either such state or territory has entered into a reciprocal agreement with the board for the recognition of home inspector licenses issued in that state or territory or such application is pursuant to and in accordance with the regulations and requirements for reciprocity promulgated by the board, shall be eligible for licensure as a home inspector without examination under the provisions of this chapter, provided that such person submits a proper application and proofs, pays or has paid the required fees, otherwise meets the requirements of this chapter, is not otherwise in violation of this chapter, and such person and such application meet the following requirements:

(1) The criteria for issuance of such license, certification, or registration by such other state or territory, including the requirement to successfully complete an examination, were substantially equivalent to Georgia's current license criteria;

(2) The application requirements and application form submitted to the other state or territory upon which such license was issued and the examination form and substance shall be available for review by the appropriate division and the examination results shall be made available to the board; and

(3) The standards of practice of such state or territory are substantially similar to those adopted by the board.

43-39B-7.

(a) Home inspector licenses shall be renewable biennially in accordance with procedures established by the board.

(b) As a condition of license renewal, a licensed home inspector shall complete at least 30 hours of board-approved continuing education during each renewal period.

43-39B-8.

(a) No person shall provide nor present, call, or represent himself or herself as able to provide a home inspection for compensation unless he or she is licensed in accordance with the provisions of this chapter.

(b) Any person who, directly or indirectly, with the intention or upon the promise of receiving any valuable consideration, offers, attempts, or agrees to perform or performs any single act of home inspection as defined in Code Section 43-39B-2 shall be deemed a home inspector within the meaning of this chapter. The commission of a single such act by a person who is required to have a home inspector license under this chapter but who has not obtained such license shall constitute a violation of this chapter.

43-39B-9.

(a) No business organization shall provide home inspection services unless each of the home inspectors employed by the business organization is licensed in accordance with the provisions of this chapter or such other employees who perform home inspection services are supervised by a licensed home inspector in accord with the requirements of the board.

(b) No business organization may use in connection with the name or signature of the business organization the title 'home inspector' to describe the business organization's services unless each of the home inspectors employed by the business organization is licensed or, if not licensed, is directly supervised, as determined by the board, by a home inspector licensed in accordance with the provisions of this chapter.

43-39B-10.

It shall be unlawful for any person:

(1) Directly or indirectly, to engage in or conduct the business of, advertise or hold himself or herself out as engaging in or conducting the business of, or act in the capacity of a home inspector within this state without first obtaining a license as required by this chapter;

(2) To perform or offer to perform for an additional fee any repairs to a structure on which the home inspector or the home inspector's company has prepared a home inspection report in the past 12 months; provided, however, that a home protection company that is affiliated with or retains a home inspector shall not be in violation of this paragraph if it performs repairs pursuant to a claim made under a home protection contract;

(3) To inspect for a fee any property in which the home inspector or the home inspector's company has any financial interest or any interest in the transfer of the property;

(4) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or the agent for the referral of any business to the home inspector or the home inspection company; and

(5) To accept an engagement to make a home inspection or to prepare a home inspection report in which the home inspection itself or the fee payable for the home inspection is contingent upon the conclusions in the home inspection report, preestablished findings, or the close of escrow.

43-39B-11.

Nothing in this chapter shall prohibit:

(1) A person who is employed by a governmental entity from inspecting residential buildings if the inspection is within official duties and responsibilities;

(2) A person from performing a home inspection if the home inspection will be used solely by a bank, savings and loan association, or credit union to monitor progress on the construction of a residential building;

(3) A person who is employed as a property manager for a residential building and whose official duties and responsibilities include inspecting the residential building from performing an inspection on the structure if the person does not receive separate compensation for the inspection work; or

(4) A person who is regulated in another profession from acting within the scope of that person's license, registration, or certification.

1 43-39B-12.

2 (a) A home inspector shall perform a visual inspection of the readily accessible installed
3 systems and components of residential buildings listed in paragraph (7) of Code
4 Section 43-39B-2 and provide a home inspection report within a reasonable time period.

5 (b) A home inspection report shall cite:

6 (1) Those systems and components inspected which, in the professional opinion of the
7 home inspector, are significantly deficient or are near the end of their service lives;

8 (2) A reason why, if not self-evident, the system or component is significantly deficient
9 or near the end of its service life;

10 (3) The home inspector's recommendations on how to correct or monitor the reported
11 deficiency; and

12 (4) Any systems and components listed in paragraph (7) of Section 43-39B-2 which were
13 present at the time of the home inspection but were not inspected and a reason they were
14 not inspected.

15 (c) A home inspector may:

16 (1) Include other inspection services, systems, or components in addition to those
17 required;

18 (2) Specify repairs, provided the home inspector is appropriately qualified and willing
19 to do so; and

20 (3) Exclude systems and components from the home inspection if requested in writing
21 by the client.

22 (d) A home inspection shall not be required to:

23 (1) Be technically exhaustive; or

24 (2) Identify concealed conditions or latent defects.

25 43-39B-13.

26 A home inspector shall not be not required to:

27 (1) Offer warranties or guarantees of any kind;

28 (2) Perform any action or make any determination unless specifically stated in any
29 standards of practice adopted by the board or except as may be required by lawful
30 authority; or

31 (3) Perform any procedure or operation that shall, in the opinion of the inspector, likely
32 be dangerous to the home inspector or other persons or damage the property or its
33 systems or components.

1 43-39B-14.
2 The board shall require a home inspector to maintain liability insurance in an amount
3 established by the board."

4 **SECTION 2.**
5 Article 6 of Chapter 3 of Title 8 of the Official Code of Georgia Annotated, relating to
6 documentation by home inspectors, is repealed in its entirety.

7 **SECTION 3.**
8 All laws and parts of laws in conflict with this Act are repealed.